

Immigration Legal Options for Ukrainians: Temporary Protected Status

SHARA SVENDSEN

What is TPS

- TEMPORARY status for nationals of designated countries confronting armed conflict, environmental disaster, or other extraordinary and temporary conditions
- Secretary of DHS decides when a country merits TPS
- TPS designation is for 6, 12, or maximum 18 months at a time
- Can be extended or terminated 60 days prior to expiration; otherwise automatically extended six months

Who is eligible?

- Be national of Ukraine
- Continuously present & residing in US since **March 1, 2022**
- Not have 2+ misdemeanors or any felony conviction
- Not firmly resettled in 3rd country
- Estimated 30,000 Ukrainians eligible

What does TPS provide?

- Temporary lawful status in US
- Temporary work authorization
- Temporary stay of removal
- Can request advance parole to travel outside the US

What does TPS not do?

- Not an automatic step towards permanent residence or citizenship
- TPS is TEMPORARY – there are several countries whose designation has been terminated
- Once TPS designation ends, revert to prior status
- TPS does not help anyone who enters the US after March 1, 2022
- TPS does not include any derivatives – every applicant must meet requirements individually

How to apply?

- <https://www.uscis.gov/humanitarian/temporary-protected-status>
- Forms I-821, I-765 (if want EAD)
- Possibly I-601 if you need and are eligible for a waiver
- Supporting Documents:
 - Proof of Identity – state issued ID, passport, birth certificate
 - Proof of Nationality – passport, birth certificate
 - Date of Entry – visa, passport, travel documents, airline tickets
 - Continuous Residence – lease, bank statements, pay stubs, school records, bills

Filing Fees

- \$50 for I-821
- \$85 for biometrics
- \$410 for I-765 (work permit)
- Total = \$545

Complications?

- Dual nationality – still eligible but watch out for firm resettlement issues & “operative nationality” (e.g., what nationality claimed at entry)
- Firm resettlement in 3rd country – person firmly resettled in a 3rd country prior to entry to US is NOT eligible for TPS
 - Entered into another country AND offer of permanent status in that country
 - Exceptions:
 - no significant ties – flight from home country, only remained as long as necessary, did not establish ties to 3rd country; or
 - restrictive conditions
- Other nonimmigrant status – people with F or H visas need to make sure that they are not violating work requirements related to their status
- Late filing

Immigration Legal Options for Ukrainians

Asylum

Maggie Cheng, Senior Staff Attorney, Seattle Office
March 2022

Northwest
IMMIGRANT
RIGHTS
Project

Agenda

- I. Asylum Eligibility and Benefits**
- II. Asylum Process**
- III. Current Situation and Border Updates**

1. **Physically present in the U.S.**
 - No asylum visa to the U.S.
2. **Past persecution and/or well-founded fear of future persecution**
 - Serious harm
3. **Harm on account of a protected ground**
 - Specifically targeted b/c of race, religion, nationality, political opinion, or membership in a particular social group
 - The more generalized the harm, the harder to win asylum
4. **Gov't unable or unwilling to protect them**
5. **Can't internally relocate to avoid harm**

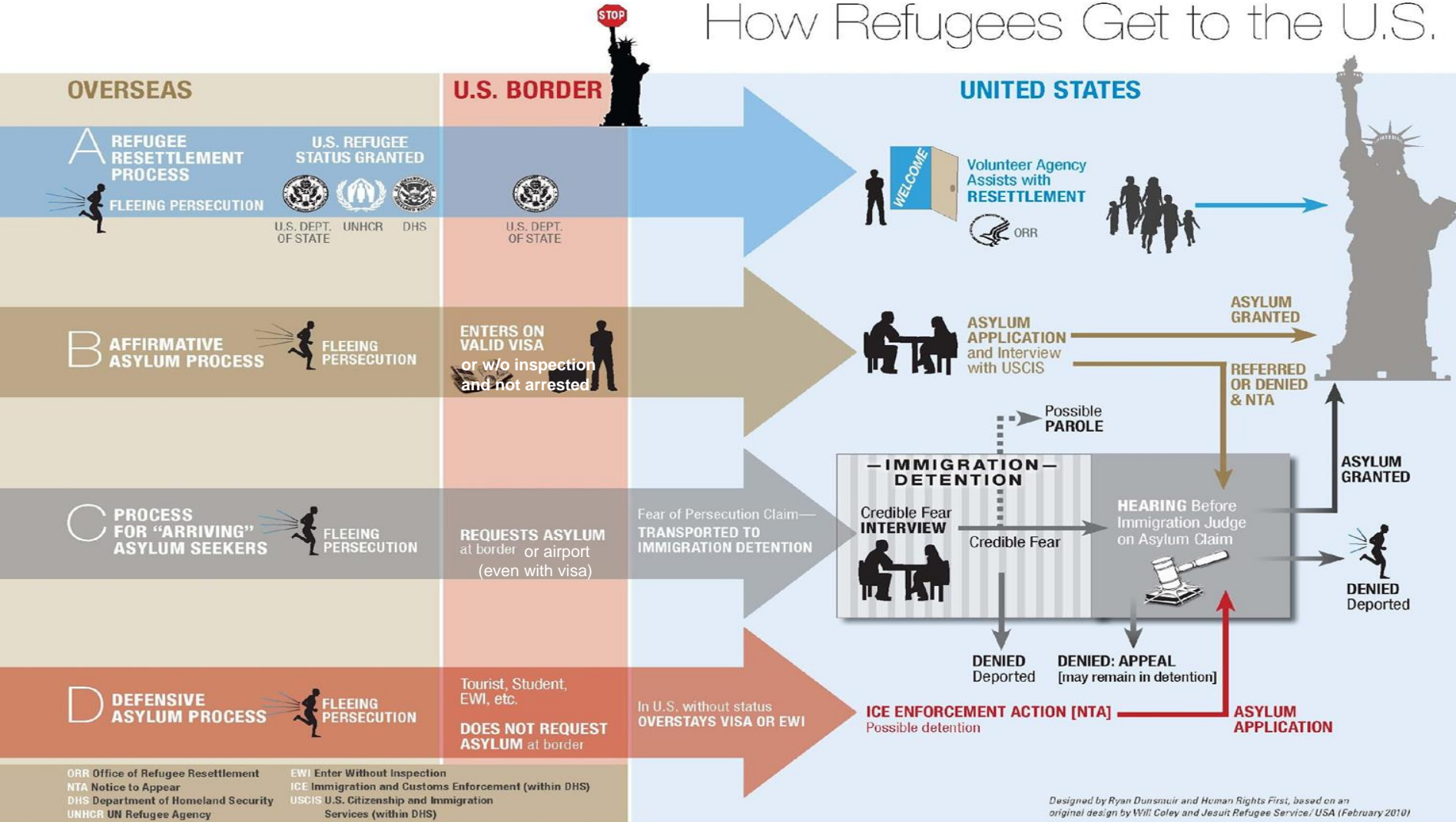
6. Bars

- One-year filing deadline
- **Firm resettlement**
 - Refugee/resident status in EU, Mexico, transit countries?
- **Safe Third Country Agreement w/ Canada**
 - Travel thru Canada - Would have to apply for asylum in Canada
- Criminal and national security grounds

7. Discretion

- **Indefinite asylee status**
 - Right to live and work in the U.S.
 - Access to federal public benefits
- **Ability to petition for spouse and children**
- **Ability to travel internationally**
 - Shouldn't return to country of persecution
- **Eligibility to apply for permanent residency ("green card") 1 year after asylum grant**
 - Pathway to citizenship

How Refugees Get to the U.S.



- **Could take years**
- **No appointed counsel**
- **May be detained in immigration detention**
- **No access to federal public benefits while asylum pending**
 - Maybe some state benefits (like WA Basic Food)
 - **Generally very limited support for asylum seekers**
 - May not have access to employment (take a while to get work permit)
 - No housing or Medicaid benefits

- **Most are headed to Poland and other European countries.**
- **Ukrainians trying to seek asylum in U.S. via Mexico**
 - **Title 42 - Ports of entries are closed for all nationalities.**
 - Reports of Ukrainians turned away and prevented from seeking asylum in U.S.
 - May be turned over to Mexican immigration and then deported or forced to apply for asylum in Mexico → firm resettlement issues
 - [#EndTitle42](#)

- **Those who managed to enter thru Southern Border**
 - Title 42 exemptions limited
 - Entry without inspection between ports of entries and driving thru border to circumvent Title 42
 - Dangerous and illegal
 - Will be allowed to seek asylum in the U.S.
 - May be arrested and detained
 - 1000+ Ukrainians apprehended in Oct. 2021-Jan 2022
 - Families with children generally released and placed in immg court proceedings (often on expedited Dedicated Docket)

www.nwirp.org

Granger, Seattle, Tacoma, and Wenatchee offices



Overview of U.S. Refugee Admissions Program

Paula Forero, Esq.

Agenda

- Overview U.S. Refugee Admissions Program
- Refugee Priorities
- P2 Lautenberg Amendment
- Refugee Allocations for FY 2022

Where is it in the law?

In 1980, Congress passed the Refugee Act of 1980, which

- incorporated the United Nations definition of a refugee,
- created the Office of Refugee Resettlement (ORR) within the Department of Health and Human Services, and
- outlined which social services should be made available to refugees.

The Immigration and Nationality Act (INA) section 101 (a)(42) defines a refugee as someone who:

- Is located **outside** of the United States
- Is of special humanitarian concern to the United States
- Demonstrates that they were persecuted or fear persecution due to **race, religion, nationality, political opinion, or membership in a particular social group**
- Is not firmly resettled in another country
- Is admissible to the United States

Section 207 of the Immigration and Nationality Act

Who runs the U.S. Refugee Admissions Program?

The Bureau of Population, Refugees, and Migration (PRM) within State Department manages the program and works in cooperation with nine national resettlement agencies to resettle refugees

Refugee Priorities

- **Priority 1:** Referred by United Nations High Commissioner for Refugees OR a U.S. Embassy, OR a designated non-governmental organization.
- **Priority 2:** Groups of special humanitarian concern
- **Priority 3:** Spouses, unmarried children under 21, & parents of persons designated as refugees or asylees or green card holders or U.S. citizens who previously had refugee or asylum status.

P2 – Lautenberg Processing

- **Reauthorized under the 2022 Omnibus Spending Bill**
- Historically used for religious minorities in Ukraine
- Processing may take 3-5 years (typical of all refugee programs)
- Done through resettlement agencies only (as are all refugee programs discussed today)

FY 2022 USRAP Allocations

- Up to 125,000 refugees allowed
- To date 6,494 as of 2/28/2022

Table I
Projected Refugee Admissions for FY 2021
and Proposed Refugee Admissions for FY 2022 by Region

Region	Revised FY 2021 Ceiling	FY 2021 projected Arrivals	Proposed FY 2022 Allocation
Africa	22,000	8,000	40,000
East Asia	6,000	1,000	15,000
Europe and Central Asia	4,000	1,000	10,000
Latin America/Caribbean	5,000	500	15,000
Near East/South Asia	13,000	2,000	35,000
Regional Subtotal	50,000	12,500	115,000
Unallocated Reserve	12,500	0	10,000
Total	62,500	12,500	125,000

TABLE II
Proposed FY 2022 Regional Ceilings by Priority

<u>Africa</u>	
Priority 1 Individual Referrals	19,000
Priority 2 Groups	20,000
Priority 3 Family Reunification Refugees	1,000
<u>Total Proposed: 40,000</u>	
<u>East Asia</u>	
Priority 1 Individual Referrals	9,500
Priority 2 Groups	5,000
Priority 3 Family Reunification Refugees	500
<u>Total Proposed: 15,000</u>	
<u>Europe / Central Asia</u>	
Priority 1 Individual Referrals	50
Priority 2 Groups	9,950
Priority 3 Family Reunification Refugees	0
<u>Total Proposed: 10,000</u>	
<u>Latin America / Caribbean</u>	
Priority 1 Individual Referrals	10,000
Priority 2 Groups	5,000
Priority 3 Family Reunification Refugees	0
<u>Total Proposed: 15,000</u>	
<u>Near East / South Asia</u>	
Priority 1 Individual Referrals	14,500
Priority 2 Groups	20,000
Priority 3 Family Reunification Refugees	500
<u>Total Proposed: 35,000</u>	
<u>Grand Total Proposed:</u>	115,000
<u>Unallocated Reserve</u>	10,000
<u>TOTAL PROPOSED CEILING:</u>	125,000

Resources

- Refugee Council USA - History of U.S. Refugee Program - <http://www.rcusa.org/history/>
- U.S. Bureau of Population, Refugee, Migration - <https://www.state.gov/refugee-admissions/>
- Report to Congress – Proposed FY 2022 USRAP - https://www.state.gov/report-to-congress-on-proposed-refugee-admissions-for-fiscal-year-2022/#_Toc80119709
- Relevant newspaper articles – CBS News - <https://www.cbsnews.com/news/ukrainian-refugees-immigration-united-states-cbs-news-explains/>
- WRAPSNet – Refugee Admissions numbers - <https://www.wrapsnet.org/admissions-and-arrivals/>

Resources

- Presidential Determination on FY 2022 USRAP - <https://www.whitehouse.gov/briefing-room/statements-releases/2021/10/08/memorandum-for-the-secretary-of-state-on-presidential-determination-on-refugee-admissions-for-fiscal-year-2022/>
- USCIS information on USRAP - <https://www.uscis.gov/humanitarian/refugees-and-asylum/usrap> and https://www.uscis.gov/sites/default/files/document/charts/USRAP_FlowChart.pdf
- Hebrew Immigrant Aid Society (HIAS) - <https://hiaspa.org/statement-regarding-ukraine-and-help-for-ukrainians/>

Thank you!



B-1 / B-2 Visa Processing and Employment-Based Options for Ukrainians

Olga Prygoda, Lawyer (Washington Bar)
U.S. Business Immigration Group, BCF LLP
<https://www.bcf.ca/en/team/olga-prygoda>

1. B-1 / B-2 Visitor for Business & Visitor for Pleasure (Tourist) and Consular Processing (NIV & IV)

- Must show “nonimmigrant intent”, i.e. nonimmigrant applicants must be able “to demonstrate intent to leave the United States after a defined period in order to return to a residence abroad”;
- NIVs are “not the appropriate tool to begin an immigrant, refugee, or resettlement process.” (U.S. Department of State);
- Additional clarifications indicated that applicants who have relatives or friends in the United States and make statements that they remain in the U.S. temporarily, may qualify for a B-2;

1. B-1 / B-2 Visitor for Business & Visitor for Pleasure (Tourist) and Consular Processing (NIV & IV)

- anecdotal evidence from the first two weeks of refugee crises shows denials; but situation is dynamic and may change; and,
- Ukrainians who have valid B-1 / B-2 visas issued before the war, generally have been admitted if nonimmigrant intent shown on entry.

Immigrant Visa Processing The State Department has designated the U.S. Consulate General in Frankfurt, Germany, as the processing post for all Ukrainian **immigrant visa applications** other than adoption cases.

Adoption cases are being handled by the U.S. Embassy in Warsaw, Poland.

2. Petition-based employment visas (H, L, O)

- H and L work visas are “dual intent”, and “O-1” is somewhat in the grey zone;
- Petition (and therefore, offer of qualified employment) is required as a pre-requisite (intra-company transfer, specialty occupation, or exceptional ability worker) ;
- Family can accompany on dependent visas (different sex or same sex partners and children less than 21 are eligible);
- Petition – based process takes up to 3-4 months even with full cooperation from employer and attorney; and,
- Some petitions (H-1B) are quota-based and annual quotas will be closed March 18, 2022.

3. Where to File

- Effectively Ukrainians are now equated to “stateless persons” for the purposes of applying for a nonimmigrant visas;
- Applications can be processed wherever Ukrainian nationals are physically present and can schedule an appointment;
- Appointment availability in Central Europe is limited; and,
- The U.S. Consulate in Frankfurt has been specifically designated to process Immigrant Visa cases for immediate relatives of U.S. Citizens and LPRs (Green Card holders) (*approved family-based immigrant petition from the USCIS is still required, and may be expedited under the USCIS guidance on expediting adjudications).

4. COVID-19 travel procedures.

- The Department of Homeland Security (DHS) and the Centers for Disease Control and Prevention (CDC) have exempted certain nonimmigrant travelers from Ukraine from COVID-19 testing and vaccination requirements for entering the U.S.
- Post-arrival testing and vaccination may be required



Humanitarian Parole



FOR UKRAINIAN
REFUGEES



Brianna Auffray,
Immigrant Rights
Manager



What is HP?

Humanitarian Parole is not the same as a visa or asylum, & does not convey an immigration status.

Parole is a discretionary authority that allows for the *temporary* entry of individuals into the United States for urgent humanitarian reasons or for significant public benefit.

Requirements



A U.S. Petitioner & Sponsor

Must show individual will have tangible support in the U.S. & will not become a public charge



Demonstrable Individual Threat

Must show evidence that the specific individual is in imminent, severe danger, & often must show third-party corroboration



Access to a U.S. Embassy or Consulate

Must show individual can attend a biometrics appointment and pick up boarding foil in-person

Strong Candidates for HP



Individuals with Immediate Relatives in the U.S.

Helpful to show the individual will be supported, and can potentially be eligible for a family-sponsored visa to obtain status



Individuals Already Harmed

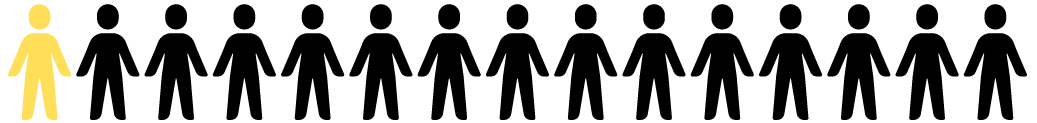
Demonstrating that the individual or someone in their immediate family was already threatened or physically harmed helps establish well-founded fear of imminent harm



Individuals with the Means to Reach the U.S.

Transportation will not be provided if application is approved, so it helps to demonstrate the individual would be able to reach the U.S. if they receive permission to enter

The Problem



USCIS is receiving more HP applications than at any other time in its history

Of the 40,000+ applications submitted since August 2021, as of February 2022, USCIS reports only 160 adjudications, and those have largely been denied.

\$575

USCIS charges an application filing fee of \$575 PER INDIVIDUAL

Unless petitioners qualify for a fee waiver, this can get extremely expensive, and filing for a fee waiver can affect an application's success if the petitioner is also the financial sponsor.

The Problem

Individuals may not be able to receive HP if they have already been referred for refugee resettlement

This is an unsettled area of law, but there is a chance that registering for refugee status could harm a humanitarian parole application. While discretion is granted on a case-by-case basis, parole is not intended to sidestep the U.S. Refugee Assistance Program (USRAP). That said, refugee resettlement could take years in some cases, so it can be a difficult decision.





How Can Advocates Help?

Special Parole Program

Precedent exists for granting parole to a class of beneficiaries, e.g. CERF, HERF

Reduced BI/B2 Scrutiny

Waive visa interviews & exercise discretion on dual intent determinations

Expedited Adjudications

Of all Ukrainian immigration & humanitarian benefit applications